

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



ORIGINAL  
WITH PROOF  
OF SERVICE

75-7204

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UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

MIKE J. BATCHKOWSKY,

Plaintiff-Appellee,

against-

PENN CENTRAL COMPANY a/k/a PENN  
CENTRAL TRANSPORTATION COMPANY,

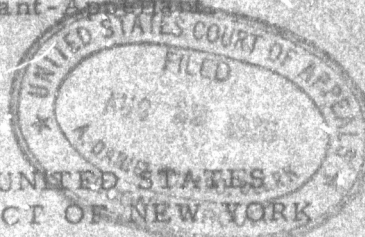
Defendant and Third Party  
Plaintiff-Appellee,

against

ANHEUSER-BUSCH, INC.,

Third Party Defendant-Appellant

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK



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BRIEF OF PLAINTIFF-APPELLEE

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## INDEX

	<u>Page</u>
Statement .....	1
Point I - Plaintiff-Appellee's Judgment Against Penn Central Company Is Not Affected by the Appeal of the Third-Party Defendant-Appellant .....	2
Conclusion .....	3

## CASE CITED

<u>DeMauro v. Central Gulf SS Corp. v. International Terminal Operating Co., Inc., S.D.N.Y. Docket No. 74-2243, decided by Second Circuit, March 28, 1975 .....</u>	2
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UNITED STATES CIRCUIT OF APPEALS  
FOR THE SECOND CIRCUIT

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MIKE J. BATCHKOWSKY,

Plaintiff-Appellee,

-against-

PENN CENTRAL COMPANY a/k/a PENN  
CENTRAL TRANSPORTATION COMPANY,

75-7204

Defendant and Third  
party plaintiff-  
appellee,

-against-

ANHEUSER-BUSCH, INC.,

Third party Defendant-  
Appellant.

-----x

BRIEF OF PLAINTIFF-APPELLEE

STATEMENT

After the plaintiff, MIKE J. BATCHKOWSKY brought an action against his employer, PENN CENTRAL COMPANY under the Federal Employers Liability Act, PENN CENTRAL COMPANY impleaded ANHEUSER-BUSCH, INC., upon a hold-harmless clause of a supplemental agreement. BATCHKOWSKY never sued ANHEUSER-BUSCH.. After BATCHKOWSKY recovered judgment against PENN CENTRAL COMPANY for \$150,000.00, the third party action

was decided by the court without a jury against the third party defendant ANHEUSER-BUSCH who has appealed.

The defendant and third party plaintiff PENN CENTRAL COMPANY has not appealed and has affirmed its liability to plaintiff at page 12 of its brief as third party plaintiff-appellee:

"Regardless of the outcome of PENN CENTRAL's third party action, it at all times remains directly liable to and bound to pay plaintiff, and this is not circumvented by the mere fact that it can recover from a third party what it pays out to plaintiff."

POINT I

PLAINTIFF-APPELLEE'S JUDGMENT AGAINST PENN CENTRAL COMPANY IS NOT AFFECTED BY THE APPEAL OF THE THIRD-PARTY DEFENDANT-APPELLANT

PENN CENTRAL COMPANY has not preserved the judgment recovered by BATCHKOWSKY against it for review by the court nor does it contend on this appeal that the verdict was excessive.

DeMauro v. Central Gulf SS Corp. v. International Terminal Operating Co., Inc., S.D.N.Y. Docket No. 74-2243, decided by Second Circuit, March 28, 1975 is inapposite. In that case both defendant-third party plaintiff and third party defendant, both contending that the verdict was excessive, had appealed.



CONCLUSION

REGARDLESS OF THE DETERMINATION OF THE  
APPEAL OF THE THIRD PARTY-DEFENDANT, THE  
JUDGMENT RECOVERED BY PLAINTIFF-APPELLEE  
BATCHKOWSKY AGAINST DEFENDANT AND THIRD  
PARTY-APPELLEE PENN CENTRAL MUST BE AFFIRMED.

Respectfully submitted,

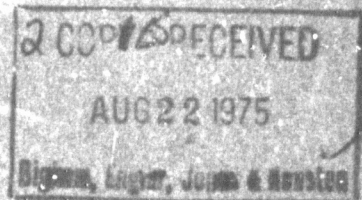
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ALBERT A. JURON,  
Of Counsel





Received <sup>2</sup> copies of the within  
Brief of Plaintiff Appellee  
this 22 day of Aug, 1975.



Sign Bigham Engler Jones & Houston  
For: Esq(s)

Att'ys for Third Party Defendant Appellant  
Anheuser Busch Inc

Received <sup>2</sup> copies of the within  
Brief of Plaintiff Appellee  
this 22 day of Aug, 1975.

Sign M. S. Mairle  
For: Robert M. Peet Esq(s)

Att'ys for Penn Central Transportation Co